

## REPORTER'S RECORD

## VOLUME 3 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA	)	IN THE DISTRICT COURT OF
	)	
Appellant	)	
	)	
V.	)	HARRIS COUNTY, TEXAS
	)	
	)	
THE STATE OF TEXAS	)	
	)	
Appellee	)	337TH JUDICIAL DISTRICT

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**PRETRIAL MOTIONS**

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On the 22nd of March, 2011, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Mike Anderson, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

**APPEARANCES**

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- AND -

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MR. ROLANDO HERNANDEZ, Interpreter

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1 (In open court, defendant present.)

2 THE COURT: Let's get on the record.

3 Cause No. 1289188 and 1289189, the State of Texas versus  
4 Obel Cruz-Garcia, charged with capital murder. There's  
5 also an aggravated sexual assault, the 89 cause number.

6 Mr. Cruz-Garcia is here with Mr. Shellist.  
7 Mr. Capitaine is in a hearing in another jurisdiction;  
8 but by agreement by all the parties, Mr. Shellist will be  
9 representing Mr. Cruz-Garcia. The State is represented  
10 by Ms. Natalie Tise.

11 We are here on a couple of issues, just to  
12 touch base and see what the status is on some discovery  
13 that was mentioned. Certainly, the record will go into  
14 that in detail from our last hearing; but suffice to say  
15 it deals with some DNA testing that was partially done by  
16 a company that is no longer in existence but that through  
17 conversations it appears has been bought by another  
18 company. And we are at that point right now.

19 Mr. Shellist, do you want to put something  
20 on the record, just to make it clear, just to show where  
21 we are.

22 MR. SHELLIST: Sure, Judge.

23 The Court has agreed to provide some, I  
24 guess, indigent funds to cover a special investigator to  
25 look into this -- at least for now -- this one particular

1 area of some DNA evidence that was tested by a company  
2 called Genetic Design back in the Nineties. We were  
3 having trouble finding Genetic Design, if they still  
4 existed; and in fact, they don't exist anymore. Their  
5 parent company, Genzyme Corporation, sold them back in  
6 1996 to a company called LabCorp. Genzyme claims that  
7 they have not kept any of the DNA evidence, which leads  
8 me to believe that, hopefully, they turned it over to  
9 this new company. We now have an investigator who is  
10 dealing with this new company, LabCorp, their legal  
11 department, to try to get this evidence.

12 We are going to, within the next day or  
13 so, get a subpoena out to LabCorp, along with a court  
14 order that the Judge has agreed to sign, telling them to  
15 turn this over to us. We're going to put on the subpoena  
16 "instanter but no later than 14 days" to comply with the  
17 subpoena and the court order. We will then follow up at  
18 the end of the two weeks with the State and let them know  
19 whether or not we've received this information.

20 If we have, then we will carry forward  
21 with our investigation and get that looked at by an  
22 expert.

23 If we haven't gotten the information, my  
24 understanding is we will come back to the Court and seek  
25 the Court's assistance to have them comply, if, in fact,

1 they're just not complying and have it. Not to belabor  
2 this; but if they don't have it, I guess we can -- I  
3 guess it's gone. And then there's nothing we can do;  
4 and, you know, we'll cross that bridge when we come to  
5 it.

6 THE COURT: And just so the record is  
7 clear, the investigator that you have chosen is?

8 MR. SHELLIST: His name?

9 THE COURT: Yes.

10 MR. SHELLIST: The firm of J.J. Gradoni,  
11 G-R-A-D-O-N-I. And Mr. Gradoni, I believe, himself -- I  
12 don't want to mislead the Court -- not that it matters,  
13 but I believe he is actually himself looking into it. He  
14 has several employees, but I believe he is handling this  
15 himself and looking into it himself.

16 THE COURT: And for the record, this firm  
17 is very well-respected around the courthouse. It's a  
18 firm that does volumes of work in investigating criminal  
19 matters and is certainly very well-suited to do this  
20 task. And if it turns out, through all the work done by  
21 defense counsel and the investigator, that the documents  
22 just don't exist, well, then that will -- certainly, the  
23 record will be clear on that; and we'll cross that bridge  
24 when we get to it.

25 MR. SHELLIST: Yes, sir.

1 THE COURT: Anything else that you feel  
2 that we need to put on the record at this time?

3 MR. SHELLIST: Nothing, Judge.

4 I mean, the State is going to be turning  
5 over some discovery for us today. I don't know if she  
6 wants to put on the record what she's turning over; but,  
7 I guess, we'll deal with that after the hearing.

8 THE COURT: I'll give her a --

9 MS. TISE: I actually have it all  
10 downstairs.

11 THE COURT: We can talk about that off the  
12 record.

13 MR. SHELLIST: Then strike that.

14 THE COURT: Ms. Tise.

15 MS. TISE: Judge, I don't have anything to  
16 add to any of that. There are some discovery matters,  
17 there's some new things that I've gotten in my file. I  
18 talked to Mr. Shellist about it and suggested that he  
19 come by and take a look at it. So, I have that available  
20 to him.

21 THE COURT: All right. Anything we need  
22 to take up at this time?

23 MR. SHELLIST: Nothing from the Defense,  
24 Your Honor.

25 MS. TISE: Nothing further from the State.

1 THE COURT: All right. Thank y'all very  
2 much.

3 MR. SHELLIST: Thank you.

4 MS. TISE: Thank you, Judge.

5 THE COURT: Off the record.

6 (Proceedings concluded.)  
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1 STATE OF TEXAS  
COUNTY OF HARRIS

2 I, Jill Hamby, Official Court Reporter in and for  
3 the 337th District Court of Harris County, State of  
4 Texas, do hereby certify that the above and foregoing  
5 contains a true and correct transcription of all portions  
6 of evidence and other proceedings requested in writing by  
7 counsel for the parties to be included in this volume of  
8 the Reporter's Record in the above-styled and numbered  
9 cause, all of which occurred in open court or in chambers  
10 and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits, if  
13 any, admitted, tendered in an offer of proof or offered  
14 into evidence.

15 I further certify that the total cost for the  
16 preparation of this Reporter's Record is \$128.00 and will  
17 be paid by Harris County.

18 Reporter's Record supplied to Harris County District  
19 Clerk's Office; not to be copied or duplicated in any way.

20 WITNESS MY OFFICIAL HAND, the 9th day of October, 2013.

21  
22 /s/Jill Hamby \_\_\_\_\_  
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